

Introduced by Senator Padilla

February 18, 2011

An act to ~~amend Section 20098 of, and to add Section 20098.5 to, the Government Code, relating to public employees' retirement.~~ *add Section 25600.1 to the Business and Professions Code, relating to alcoholic beverages.*

LEGISLATIVE COUNSEL'S DIGEST

SB 778, as amended, Padilla. ~~Public employees' retirement: executive retirement.~~ *Alcoholic beverages licensees: contests and sweepstakes.*

The Alcoholic Beverage Control Act prohibits any licensee from giving any premium, gift, or free goods in connection with the sale or distribution of any alcoholic beverage, except as provided.

This bill would permit an authorized licensee to conduct, sponsor, or participate in a contest or sweepstakes, as defined, offering the chance to win prizes, if specified conditions are met.

The Alcoholic Beverage Control Act provides that a violation of any of its provisions for which another penalty or punishment is not specifically provided is a misdemeanor. This bill would expand existing crimes by imposing additional duties on a licensee under the act, thus, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Existing law requires the Board of Administration of the Public Employees' Retirement System to appoint and fix the compensation of certain employees of the system whose positions are designated as managerial, notwithstanding specified authority granted to the Department of Personnel Administration. Existing law requires that when one of these positions is filled through a general civil service appointment, it be filled from an eligible list based on an examination that was held on an open basis, as specified.

This bill would recodify the latter provision relating to the filling of these positions through general civil service appointments.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~yes.
State-mandated local program: ~~no~~yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 25600.1 is added to the Business and
2 Professions Code, to read:
3 25600.1. (a) Notwithstanding any other provision of law, an
4 authorized licensee may conduct, sponsor, or participate in contests
5 and sweepstakes, subject to the following conditions:
6 (1) A purchase or entry fee shall not be required to enter a
7 contest or sweepstakes. Entry or extra chances in a contest or
8 sweepstakes shall not be made available via the purchase of an
9 alcoholic beverage. Entrance into a contest or sweepstakes shall
10 be limited to persons 21 years of age or older.
11 (2) (A) Caps, cap liners, corks, labels, cartons, cases, or other
12 material attached to an alcoholic beverage when purchased shall
13 not be used as an entry to a contest or sweepstakes or as a means
14 of determining the amount or size of the prize or the winner in a
15 contest or sweepstakes.
16 (B) Neck hangers may carry an entry form only if similar entry
17 forms are available at the point of sale and are reproduced or an
18 alternative means of entry is available.
19 (3) Scratch-offs, pull tabs, or other means of instant wins in a
20 contest or sweepstakes shall be not permitted.
21 (4) A visit to a retail premises shall not be required to enter a
22 contest or sweepstakes.
23 (5) Alcoholic beverages or anything redeemable for alcoholic
24 beverages shall not be awarded as a contest or sweepstakes prize.
25 This paragraph shall not prohibit a contest or sweepstakes where

1 *the prize is cash or the awarding of cash in lieu of a prize that is*
2 *tangible personal property or real property.*

3 (6) *A retail licensee shall not serve as the agent of an authorized*
4 *licensee by collecting or forwarding entries or awarding prizes to*
5 *a contest or sweepstakes winner. A retail licensee may match*
6 *entries with numbers or pictures at the point-of-sale on the licensed*
7 *premises only if entrants are also offered the opportunity to use*
8 *an alternative means to determine prize-winning status.*

9 (7) *A retail licensee, beer and wine wholesaler, or distilled*
10 *spirits wholesaler shall not share in, or contribute to, the costs of*
11 *a contest or sweepstakes authorized by this section.*

12 (8) (A) *Advertising of a contest or sweepstakes at an on-sale*
13 *retail license location or an off-sale retail license location shall*
14 *comply with Section 25611.1 or Section 25503.1, respectively.*

15 (B) *Advertising or promotion of a contest or sweepstakes shall*
16 *not identify or refer to any retail licensee.*

17 (C) *Advertising or promotion of a contest or sweepstakes shall*
18 *not be conducted exclusively in, by, or through any retail licensee*
19 *or chain of retail licensees.*

20 (D) *Placement of signs or other advertising of a contest or*
21 *sweepstakes in a licensed retail premises shall not be conditioned*
22 *upon product placement with the licensed premises.*

23 (9) *Contest or sweepstakes prizes shall not be awarded to any*
24 *retail or wholesale licensee or agent, officer, or family member of*
25 *any retail or wholesale licensee. This subdivision shall not apply*
26 *to a contest or sweepstakes conducted by an authorized licensee*
27 *and wholesaler as part of an incentive program.*

28 (b) *For purposes of this section:*

29 (1) *“Authorized licensee” means a winegrower who may or*
30 *may not hold another license or licenses under this division.*

31 (2) *“Contest” means a game, contest, puzzle, scheme, plan, or*
32 *similar activity that holds out or offers to participants the*
33 *opportunity to receive or compete for gifts, prizes, gratuities, or*
34 *other things of value as determined by skill, knowledge, or ability*
35 *rather than upon random selection.*

36 (3) *“Sweepstakes” means a procedure, activity, or event for the*
37 *distribution of anything of value by lot, chance, or random selection*
38 *where the odds for winning a prize are equal for each entry.*

39 (c) *Nothing in this section authorizes marketing schemes where*
40 *consumers are entitled to an allotment of points based on purchases*

1 *made over a period of time that can be redeemed for prizes, things*
2 *of value, or additional contest or sweepstakes entries.*

3 *(d) An authorized licensee that violates this section, in addition*
4 *to any other penalty imposed by this division, may be prohibited*
5 *by the department from conducting, sponsoring, or participating*
6 *in a contest or sweepstakes for California residents for a period*
7 *of 12 months.*

8 *SEC. 2. No reimbursement is required by this act pursuant to*
9 *Section 6 of Article XIII B of the California Constitution because*
10 *the only costs that may be incurred by a local agency or school*
11 *district will be incurred because this act creates a new crime or*
12 *infraction, eliminates a crime or infraction, or changes the penalty*
13 *for a crime or infraction, within the meaning of Section 17556 of*
14 *the Government Code, or changes the definition of a crime within*
15 *the meaning of Section 6 of Article XIII B of the California*
16 *Constitution.*

17 ~~SECTION 1. Section 20098 of the Government Code is~~
18 ~~amended to read:~~

19 ~~20098. (a) The board shall appoint and, notwithstanding~~
20 ~~Sections 19816, 19825, 19826, 19829, and 19832 shall fix the~~
21 ~~compensation of an executive officer, a general counsel, a chief~~
22 ~~actuary, a chief investment officer, and other investment officers~~
23 ~~and portfolio managers whose positions are designated managerial~~
24 ~~pursuant to Section 18801.1.~~

25 ~~(b) The executive officer, deputy executive officers, and the~~
26 ~~assistant executive officers may administer oaths.~~

27 ~~(c) When fixing the compensation for the positions specified in~~
28 ~~subdivision (a), the board shall be guided by the principles~~
29 ~~contained in Sections 19826 and 19829, consistent with its~~
30 ~~fiduciary responsibility to its members to recruit and retain highly~~
31 ~~qualified and effective employees for these positions.~~

32 ~~(d) An individual who held a position designated in subdivision~~
33 ~~(a), or was a member of the board, a deputy executive officer, or~~
34 ~~an assistant executive officer, shall not, for a period of two years~~
35 ~~after leaving that position, for compensation, act as agent or~~
36 ~~attorney for, or otherwise represent, any other person, except the~~
37 ~~state, by making any formal or informal appearance before, or any~~
38 ~~oral or written communication to, the Public Employees'~~
39 ~~Retirement System, or any officer or employee thereof, if the~~
40 ~~appearance or communication is made for the purpose of~~

1 ~~influencing administrative or legislative action or any action or~~
2 ~~proceeding involving the issuance, amendment, awarding, or~~
3 ~~revocation of a permit, license, grant, contract, or sale or purchase~~
4 ~~of goods or property.~~

5 SEC. 2. ~~Section 20098.5 is added to the Government Code, to~~
6 ~~read:~~

7 ~~20098.5. When a position specified in subdivision (a) of Section~~
8 ~~20098 is filled through a general civil service appointment, it shall~~
9 ~~be filled from an eligible list based on an examination that was~~
10 ~~held on an open basis, and tenure in the position shall be subject~~
11 ~~to the provisions of Article 2 (commencing with Section 19590)~~
12 ~~of Chapter 7 of Part 2 of Division 5 of Title 2. In addition to the~~
13 ~~causes for action specified in that article, the board may take action~~
14 ~~under the article for causes related to its fiduciary responsibility~~
15 ~~to its members, including the employee's failure to meet specified~~
16 ~~performance objectives.~~